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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 5, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Comments in Response to Petitions For Reconsideration and/or
Clarification of the Commission's First Report and Order in
WT Docket No. 96-86

Dear Ms. Salas:

On behalf of the Commonwealth of Pennsylvania (the "Commonwealth"), and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, enclosed herewith for filing are an original and 11 copies of the Commonwealth's Comments in response to a Petition for Reconsideration filed by American Association of State Highway and Transportation Officials, et al. in the above-captioned proceeding.

Kindly stamp and return to this office the enclosed copy of this filing designated for that purpose. You may direct any questions concerning this material to the undersigned, counsel to the Commonwealth of Pennsylvania

Respectfully submitted,


Lisa M. Higginbotham Fowlkes

Enclosures

No. of Copies rec'd 0+11
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEB - 5 1999

In the Matter of)

The Development of Operational,
Technical and Spectrum Requirements
For Meeting Federal, State and Local
Public Safety Agency Communication
Requirements Through the Year 2010)

Establishment of Rules and Requirements
For Priority Access Service)

WT Docket No. 96-86

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF
COMMONWEALTH OF PENNSYLVANIA

The Commonwealth of Pennsylvania (the "Commonwealth"), through its undersigned counsel, hereby files its comments in response to petitions seeking reconsideration and/or clarification of the Commission's First Report and Order in the above-captioned proceeding.¹

The Commonwealth supports the request of the Joint Petitioners² that the Commission allow a one-year period for states to exercise the "opt-out" provisions

¹ The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98-191 (released September 29, 1998) ("First Report and Order").

² American Association of State Highway and Transportation Officials, Forestry Conservation Communications Association, International Association of Fire Chiefs, Inc., International Association of Fish and Wildlife Agencies, International Municipal Signal Association, and National Association of State Foresters (the "Joint Petitioners").

adopted in the First Report and Order.³ As the Joint Petitioners noted, the current 120 day period is simply too short a time for a state to exercise the "opt-out" provisions, particularly in a state such as Pennsylvania where the exercise of the option could require contacting representatives of in excess of 4,000 government agencies. Such a task simply cannot be completed in the current 120 day period. Allowing a one year period would provide additional time for states to complete this process, without impairing the deployment of the 700 MHz band.

On a related note, the Commonwealth takes this opportunity to reiterate its request for expedited treatment of its Petition seeking clarification of, among other things, the term "consensus" for purposes of the opt-out provisions. In its original Petition for Clarification, the Commonwealth asked the Commission to clarify that the meaning of "consensus" with respect to the "opt-out" provisions requires an agreement by only a simple majority of the Regional Planning Committee (RPC) members from the state seeking to exercise the "opt-out" options. Since filing its Petition, the Commonwealth has concluded that even a "simple majority" requirement would place a heavy and impractical burden on states seeking to exercise the "opt-out" provisions.

Requiring a state to obtain affirmative responses from all, a supermajority, or even a simple majority of thousands of governmental entities within the state would place a heavy burden on states and would render it virtually impossible as a practical matter, for the state to exercise the "opt-out" provisions.

Consequently, the Commonwealth now believes that the better approach would

³ Joint Petition, at 4.

be for the Commission to clarify that states will be deemed to have reached a consensus where, after notice and an open opportunity for discussion and response, no objection was raised or the record generated from the discussion and responses evidenced general support for exercise of the "opt-out" provisions. This approach would ensure that all interested state members of the RPC would have an opportunity to fully debate and negotiate the exercise of the "opt-out" option.⁴ At the same time, this approach would alleviate the possibility of a single member having the power to veto the wishes of other state members who favor exercise of the "opt-out" option by either continuously objecting to the exercise of the option or by simply refusing to respond. This approach would also allow states to reach a consensus on the "opt-out" issue without the burden of obtaining an affirmative agreement with a significant number of members.⁵

Accordingly, the Commonwealth urges the Commission to allow states a one year period to exercise the "opt-out" provisions. Moreover, the Commonwealth strongly urges the Commission to clarify that a state is deemed to have reached a "consensus" to exercise the "opt-out" provisions where, after notice to all state members and an

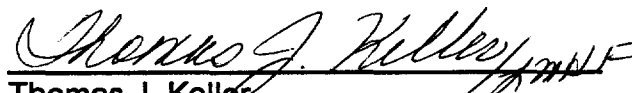
⁴ APCO Comments, at 1-3.

⁵ This approach would also alleviate delays in exercise of the opt-out option in cases where one or several RPC members from a state refuse to participate in the discussion simply out of lack of concern about the issue.

opportunity for response, no objection was raised or the record generated from the notice and response evidenced general support for exercise of the "opt-out" provisions.

Respectfully submitted:

COMMONWEALTH OF PENNSYLVANIA


Thomas J. Keller


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February 5, 1999

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of February 1999, I caused copies of the foregoing document to be served by first class U.S. mail to the following:

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A handwritten signature in cursive script, reading "Pauline Hunter", written over a horizontal line.